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in the

Supreme Court

of the

United States

October Term, 1983

PHILIP G. NOURSE, as Circuit Court Judge of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida,

Petitioner,

vs.

STATE OF FLORIDA, EX REL DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DAVID PINGREE,

Respondents.

EMERGENCY SUPPLEMENT OCCASIONED BY A RECENT DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, CORRECTING ITS PREVIOUS LEGAL ERRORS IN THIS MATTER

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

APPENDIX iii

EMERGENCY SUPPLEMENT
OCCASIONED BY A RECENT
DECISION OF THE DISTRICT
COURT, FOURTH DISTRICT,
CORRECTING ITS PREVIOUS
LEGAL ERRORS IN THIS
MATTER 1

TABLE OF AUTHORITIES

Page

Golstein v. Golstein
4th DCA No. 83-1745
December 7, 1983..... 1, 3

Cone v. Cone, 62 So.2d 907
(Fla. 1953).....3

APPENDIX

	Page
Fourth District Court of Appeal Opinion	7
Certificate of Service	10

EMERGENCY SUPPLEMENT OCCASIONED BY A RECENT DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, CORRECTING ITS PREVIOUS LEGAL ERRORS IN THIS MATTER

Now that the District Court of Appeal, Fourth District, has corrected itself as to the law involved in this matter, comes now PHILIP G. NOURSE, Petitioner herein, and hereby supplements the legal authority previously cited in its Petition.

On December 7, 1983, after the Petition herein was filed in the Supreme Court of the United States, a different three judge panel of the intermediate appellate court (4th DCA) handed down the case of Golstein v. Golstein, Case No. 83-1745, December 7, 1983, a copy of which is set out herein on pp 7.

The previous erroneous three judge court had adjudicated that this trial court (Petitioner) lacked jurisdiction over the "13 year old -- 13 time runaway girl" involved. It has also erred by stating that the trial court lacked authority to protect the federal constitutional rights of this child to see to it that the child's rehabilitation was "safe and secure."

Much to the delight of this Petitioner, in the recent case of a new three judge panel of the District Court of Appeal, Fourth District, in a discussion of a trial court's jurisdiction over a child herein stated:

> "...whenever a minor child resides in this state, a circuit court has inherent jurisdiction to entertain matters pertaining to custody and enter any orders pertaining

> to custody and enter any orders appropriate to that child's welfare. See Cone v. Cone, 62 So.2d 907 (Fla. 1953)." (Emphasis supplied.)

Even more importantly this "enlightened" three judge panel of the 4th DCA quoted the Florida Supreme Court (who apparently overlooked its own precedent on Petitioner's unsuccessful appeal and petition) by stating that:

> "...independent of statute, a court of chancery has inherent jurisdiction to control and protect infants and their property. Id. at 908. Golstein v. Golstein, 4th DCA, Case No. 83-1745, December 7, 1983. (Emphasis supplied.)

As to HRS's "standing smokescreen", Petitioner needs only to point out that it is the Petitioner who is being sued

by HRS -- not Wendy Shaw. It is the Petitioner who is trying to protect the child and her constitutional rights from the "lax and indifferent" HRS. Fortunately, for Wendy, it was not her decapitated skull that was dug up yesterday fifteen miles north of here in an orange grove! It was the skull of another 13 year old runaway girl. (Did HRS's policy allow her to also wander the highways unsupervised?) The point, and bottom line to all of this, is whether or not HRS can successfully challenge a court's duty to protect the federal constitutional rights of a child -- hence standing does exist. Among other things, to hold otherwise would mean that this court is not obligated to enforce a defendant's "Miranda Rights."

SUPPLEMENTAL CONCLUSION

Now that it is obvious that the trial court has inherent (as well as statutory) jurisdiction over children within Florida (irrespective of statutes or HRS rules and regulations) jurisdiction should be accepted by the Supreme Court of the United States for the purpose of settling once and for all the undecided federal question of "safe and secure" rehabilitation of children. Administrators should not be permitted to be both "judge and jury" over children who cannot look after themselves. Notwithstanding the "smoke screen" asserted by HRS, this is the only issue to be resolved. While the Petitioner is unaware of the contents of the Amicus Curiæ Brief being prepared herein by the Attorney ad Litem (Public

Defender) of the child, Petitioner feels sure that he and all 150 million intellectually honest American citizens need and want the Supreme Court of the United States to consider little children now. This problem should be the number one priority for this term of court. All children living in this United States of America regardless of race, religion or sex desperately need your help. Wendy Shaw and other "bull-headed" kids living in our area are like those kids that live in Atlanta -- they live in a three county area where parts of dismembered children are being dug up every day in our local orange groves. Please, we need your help today -- not tomorrow.

Respectfully submitted,

s/ Philip G. Nourse

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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH
DISTRICT JULY TERM 1983

DAVID GOLSTEIN,	)	
	)	
Appellant,	)	
v.	)	CASE NO. 83-1745
	)	
SUSAN GOLSTEIN,	)	
	)	
Appellee.	)	
	)	

Opinion filed December 7, 1983

Non-final appeal from the Circuit Court for Broward County; George W. Tedder, Jr., Judge.

Richard G. Bartmon of Anthony J. Schremin, P.A., Miami, for appellant.

Mary Rudd Robinson of Legal Aid Service of Broward County, Inc., Fort Lauderdale, for appellee.

LETTS, J.

A stepfather petitioned for custody of his stepson, but the trial court found it had no jurisdiction to consider the petition. We disagree and reverse.

It is true that the wording of Section 61.13(b) of the Florida Statutes (1981), which refers to the "minor children of the parties," would not appear to envisage or encompass a stepfather absent adoption although the language does not specifically exclude him. However, whenever a minor child resides in this state, a circuit court has inherent jurisdiction to entertain matters pertaining to custody and enter any orders appropriate to that child's welfare. See Cone v. Cone, 62 So.2d 907 (Fla. 1953).

It is also true that the facts of the Cone case reveal involvement of a natural father, rather than a stepfather, yet the language employed in that opinion is overpowering in declaring that "independent of statute, a court of chancery has inherent jurisdiction to

control and protect infants and their property." Id. at 908.

Furthermore, this very court in Heffernan v. Goldman, 256 So.2d 522 (Fla. 4th DCA 1971), upheld the award of custody of two minor children to a stepmother in preference to the natural mother. The Fifth District has likewise approved a custody award to a stepparent. Gorman v. Gorman, 400 So.2d 75 (Fla. 5th DCA 1981).

We therefore reverse the order of the trial judge and remand for further proceedings.

REVERSED AND REMANDED.

BERANEK and HERSEY, JJ., concur.

I HEREBY CERTIFY that an original and forty copies of the foregoing Emergency Supplement Occasioned by a Recent Decision of the District Court of Appeal, Fourth District, Correcting its Previous Legal Errors in this Matter, has been furnished by U.S. Mail this 22nd day of December, 1983, to the Clerk of the Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543; an original and two copies to Harry Lee Anstead, Chief Judge of the District Court of Appeal, Fourth District, P. O. Box A, West Palm Beach, Florida 33401; an original and two copies to Chief Justice James E. Alderman, Supreme Court of the State of Florida, Tallahassee, Florida 32301; one copy to Steven W. Huss, Assistant General Counsel, Department of Health and Rehabilitative Services,

1323 Winewood Blvd., Tallahassee, Florida 32301; K. C. Collette, Department of Health and Rehabilitative Services, 111 Georgia Avenue, West Palm Beach, Florida 33401; Michelle Russell, Assistant State Attorney for the Nineteenth Judicial Circuit, P. O. Drawer 4401, Fort Pierce, Florida 33454; and Abraham J. Gale, Assistant Public Defender for the Nineteenth Judicial Circuit, 111 Atlantic Avenue, Fort Pierce, Florida 33450

s/ Philip G. Nourse

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